



NATURAL RESOURCES DEFENSE COUNCIL

May 24, 2006

VIA HAND DELIVERY AND CERTIFIED MAIL

Administrator Stephen L. Johnson  
1101A  
USEPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: Notice of Violation of the Clean Water Act

Dear Administrator Johnson:

On behalf of the Natural Resources Defense Council (NRDC), we ask that you take immediate action to remedy the Environmental Protection Agency's (EPA) ongoing violations of the Clean Water Act, as amended by the Beaches Environmental Assessment, Cleanup and Health Act of 2000 (BEACH Act). NRDC is a national, non-profit environmental organization with over 650,000 members nationwide, and a staff of scientists, lawyers, and other specialists committed to protecting public health and the environment. This letter provides notice pursuant to 33 U.S.C. § 1365(b) that we intend to bring legal action if the violations described below are not corrected within sixty days.

In violation of the BEACH Act, EPA has failed to initiate and complete appropriate studies to assess the full human health risk from exposure to pathogens in coastal recreation waters. EPA has also failed to publish revised water quality criteria for pathogens and pathogen indicators based on those studies. These failures violate express statutory deadlines contained in the BEACH Act and jeopardize public health.

I. Exposure to Pathogens in Coastal Recreation Waters Is a Significant Threat to Public Health.

More than 180 million people visit coastal and Great Lakes beaches every year, and swimming and surfing are favorite pastimes in the United States. But beach closings due to hazardous contamination are on the rise nationwide; there were nearly 20,000 beach closing and health advisory days across the country in 2004. Eighty-five percent of the closing and advisory days were prompted by dangerously high bacteria levels, indicating the presence of human or animal waste. The main culprits are improperly treated sewage and contaminated stormwater runoff.

This beachwater pollution poses a significant threat to public health. Pathogens in contaminated waters can cause a wide range of diseases – including gastroenteritis, dysentery, hepatitis, and respiratory illness. According to the Centers for Disease Control, children, pregnant women, and people with compromised immune systems are at greatest risk from exposure to these pathogens. The Senate Committee Report on the BEACH Act summarizes the significant health concern:

The public health risks from swimming in polluted coastal waters continue to be serious. The U.S. Environmental Protection Agency's (EPA's) research has found that contact with contaminated water can lead to gastrointestinal disorders and ear or skin infections, and inhalation of contaminated water can cause respiratory diseases. The pathogens responsible for these diseases can be bacteria, viruses, protozoans, fungi, or parasites. Public health risks are especially of concern to sensitive subpopulations who are particularly vulnerable.

S. Rep. No. 106-366 at 2. The BEACH Act was enacted to address these concerns and improve water quality protections for the nation's coastal and Great Lakes beaches. Pub. L. 106-284, Oct. 10, 2000 (amending the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. §§ 1251 et seq.).

II. EPA Has Failed to Comply with Nondiscretionary Duties under the BEACH Act to Study and Protect Against Pathogens in Coastal Recreation Waters.

The BEACH Act requires EPA to conduct comprehensive studies of pathogens in coastal recreation waters to form the basis for updating public health standards and methods for detecting pathogens. 33 U.S.C. § 1254(v). These studies must evaluate and account for, at a minimum: (a) all types of potential human health risks from exposure to pathogens in coastal recreational waters, including gastrointestinal and non-gastrointestinal effects, such as ear, nose, eye, and respiratory infections, skin rashes, fever, and all other illnesses that can be transmitted through swimming in contaminated water; (b) all types of geographic and aquatic conditions, so that people are safe from waterborne disease no matter where or when they swim; (c) all types of pathogens that pollute coastal waters, including cryptosporidium and giardia, and other parasites, viruses, fungi, and protozoa; and (d) all sources of beachwater pollution, including stormwater, sewage, and animal wastes. EPA is also required to improve the speed and accuracy of the test methods it develops for detecting pathogens in recreational waters. *Id.* § 1254(v)(1)-(4). The BEACH Act requires that EPA “shall initiate” appropriate studies by April 2002, and “shall complete” these studies by October 2003. *Id.* § 1254(v). EPA has failed to meet either deadline.

EPA's National Epidemiological and Environmental Assessment of Recreational Water Study – the NEEAR Water Study – is inadequate to meet the agency's obligations under the law. This study fails to evaluate all types of illnesses, pathogens, coastal waters, and sources of beachwater pollution, and therefore falls short of the statutory criteria. Furthermore, the NEEAR study is years behind schedule. EPA estimates that it will not complete all phases of the NEEAR study until 2009: six years after the deadline.

The BEACH Act further requires EPA to develop revised water quality criteria for pathogens and pathogen indicators for use in recreational waters, based on the studies outlined above. Specifically, 33 U.S.C. § 1314(a)(9) requires that EPA “shall publish,” by October 10, 2005, “new or revised water quality criteria for pathogens and pathogen indicators (including a revised list of testing methods, as appropriate), based on the results of the studies conducted under section 1254(v) of this title, for the purpose of protecting human health in coastal recreation waters.” These water quality criteria must protect against all types of illnesses and exposure to all types of pathogens from all sources of beachwater pollution. Furthermore, EPA must account for the vulnerabilities of sensitive subpopulations, including infants and children, and people with weakened immune systems. Finally, EPA must protect against potential acute health risks from one-time and repeated exposures so that people are safe every time they swim.

EPA has failed to meet the October 10, 2005 deadline, and in fact has stated that it does not expect to finish publication of the revised water quality criteria until 2011. This is a clear violation of the law.

### III. Conclusion.

EPA has failed to initiate and complete the studies required by 33 U.S.C. § 1254(v) by the statutory deadlines of April 2002 and October 2003. EPA has also failed to publish the new or revised water quality criteria required by 33 U.S.C. § 1314(a)(9) by the statutory deadline of October 10, 2005. Please cure these violations within sixty days. If EPA fails to take immediate steps to address its non-compliance with the BEACH Act, NRDC will file suit in federal district court seeking declaratory relief, injunctive relief, and litigation costs, as appropriate.

Do not hesitate to contact us if you would like to discuss this matter.

Respectfully,



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